

1 MCGREGOR W. SCOTT
United States Attorney
2 MIRIAM R. HINMAN
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

6 Attorneys for Plaintiff
United States of America
7

8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
Plaintiff,
13
v.
14 STEVEN MICHAEL ROBERTS,
15
Defendant.

CASE NO. 2:20-CR-007 JAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: May 5, 2020
TIME: 9:15 a.m.
COURT: Hon. John A. Mendez

16
17 This case is set for a status conference on May 5, 2020. On March 17, 2020, this Court filed
18 General Order 611, which suspends all jury trials in the Eastern District of California scheduled to
19 commence before May 1, 2020. This General Order was entered to address public health concerns
20 related to COVID-19.

21 Although the General Order addresses the district-wide health concern, the Supreme Court has
22 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
23 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
24 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
25 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
26 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
27 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally
28 or in writing").

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on May 5, 2020.
2. By this stipulation, defendant now moves to continue the status conference until June 9, 2020 at 9:15 a.m., and to exclude time between May 5, 2020, and June 9, 2020, under Local Code T4.

1 3. The parties agree and stipulate, and request that the Court find the following:

2 a) On January 16, 2020, the government produced four disks of discovery to defense
3 counsel, which included documents, photos, and audio and video recordings.

4 b) Counsel for defendant desires additional time to review the discovery and to meet
5 with her client about the case. The defendant was released to a 90-day residential treatment
6 program on March 2, 2020, and his anticipated completion date is May 31, 2020. Counsel for
7 the defendant informed the government that the defendant's participation in the treatment
8 program has made communication between counsel and the defendant difficult. As described
9 below, the COVID-19 pandemic is also now making it difficult for defense counsel to meet with
10 her client.

11 c) Counsel for defendant believes that failure to grant the above-requested
12 continuance would deny him/her the reasonable time necessary for effective preparation, taking
13 into account the exercise of due diligence.

14 d) The government does not object to the continuance.

15 e) In addition to the public health concerns cited by General Order 611 and
16 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
17 this case because the pandemic is delaying counsel's ability to become familiar with the case and
18 her client. Sacramento County has directed individuals not to leave their residences except to
19 perform essential activities. For the health of the defendant, counsel, and the public, it is
20 important to minimize personal contacts. Defense counsel has been representing the defendant
21 for just four months, and defense counsel wishes to conduct further in-person meetings with her
22 client to discuss the case and go over documents.

23 f) Based on the above-stated findings, the ends of justice served by continuing the
24 case as requested outweigh the interest of the public and the defendant in a trial within the
25 original date prescribed by the Speedy Trial Act.

26 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
27 et seq., within which trial must commence, the time period of May 5, 2020 to June 9, 2020,
28 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]

1 because it results from a continuance granted by the Court at defendant's request on the basis of
2 the Court's finding that the ends of justice served by taking such action outweigh the best interest
3 of the public and the defendant in a speedy trial.

4 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
5 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
6 must commence.

7 IT IS SO STIPULATED.

8
9
10 Dated: April 10, 2020

McGREGOR W. SCOTT
United States Attorney

11
12 /s/ MIRIAM R. HINMAN
MIRIAM R. HINMAN
Assistant United States Attorney

13
14
15 Dated: April 14, 2020

/s/ CHRISTINA SINHA
CHRISTINA SINHA
Counsel for Defendant
Steven Michael Roberts

16
17
18
19 **FINDINGS AND ORDER**

20 IT IS SO FOUND AND ORDERED this 14th day of April, 2020.

21
22 /s/ John A. Mendez
23 THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE